



SB 28 Child Custody – Legal Decision–Making and Parenting Time

oppose

Testimony of Maryland Centers for Independent Living

Senate Judicial Proceedings, January 31, 2023

The seven Centers for Independent Living (CIL) were established by federal law and work to ensure the civil rights and quality services of people with disabilities in Maryland. Centers for Independent Living are nonprofit disability resource and advocacy organizations located throughout Maryland operated by and for people with disabilities. CIL staff and Boards are at least 51% people with disabilities. We are part of a nationwide network which provides Information and Referral, Advocacy, Peer Support, Independent Living Skills training, and Transition Services.

We write in strong opposition to SB 28, to the extent that it repeals due process and protections for persons with disabilities and rejects findings and recommendations of the Commission on Child custody Decision Making. In 2013, the Maryland General Assembly created a Commission on Child Custody Decision Making to study of several issues including, “how to ensure that child custody determinations involving parents with mental health, sensory or physical disabilities are handled in a fair and even manner based on actual evidence and not presumed limitations.” Members of the Commission were appointed by the General Assembly, the Judiciary and the Governor. Public hearings were held statewide and research, meetings and discussions were conducted by the Commission in accord with its mission.

The findings and recommendations of the Commission resulted in passage of the law that SB 28 attempts to amend. Critically, the proposed legislation repeals language that counters discrimination of parents with disabilities, which the Commission found to exist based on history, studies and Maryland law.

The Commission’s report found that the failure of custody determinations to identify a nexus between a parent’s disability and adverse consequences to a child contributes to disparate treatment of parents with disabilities. The Commission’s Report recommended that written findings be required to support a court’s determination that a parental disability adversely affects the child; that such determinations be based upon the preponderance of evidence, and that the burden of proof be established. These commonsense procedures help to clarify decision making processes when considering a parent’s disability in child custody and related proceedings. These recommendations are currently in statute, but are those which SB 28 would repeal.

As stated by the Supreme Court of Maryland, “When courts allow presumptions of inadequacy to replace individual inquiry, they erect insurmountable hurdles for parents labeled . . . disabled”

The Court's finding has support from a seminal report by the National Council on Disabilities , which determined, based on cited research and studies, that parents with disabilities are likely to encounter disparate treatment in the family law system on the basis of other people's perception of their disability and its impact on parenting. The existence of implicit bias is a direct result of our history.

This history was recognized by Congress when passing the Americans with Disabilities Act in 1990. The Act 's findings states that "discriminatory policies and practices affect people with disabilities in every aspect of their lives . . . [including] securing custody of their children." Examples of our discriminatory practices include allowing mass involuntary sterilization of people with disabilities. By the early 1930s, more than thirty (30) states had laws permitting the involuntary sterilization of people with disabilities. By the 1960s, such laws were used to sterilize at least 60,000 people. This sterilization of people with disabilities against their will occurred with the approval of the federal courts. In *Buck v. Bell*, the U.S. Supreme Court upheld a Virginia law that authorized forced sterilization of a fifteen-year-old young woman with disabilities. The Court's reasoning reflects a classic eugenic viewpoint that people with disabilities were "imbeciles" who needed to be stopped from reproducing "degenerates". As recently as 1983, fifteen (15) states continued to have compulsory sterilization laws. In 1914, thirty-seven (37) states and the District of Columbia had laws restricting marriage for people with disabilities including those who were "epileptic," or "diseased," among others. Although society and the law have progressed since the days of mass institutionalization and forced sterilization, subtler disability misconceptions persist. This is especially true of the fundamental constitutional right to raise children, according to numerous studies and reports. Several Maryland child custody cases examined by the Commission were later overturned by a higher court for lack of findings or evidence that a parent's disability had any adverse impact on their child.

In sum, the Commission found that bias exists in custody determinations involving parents with disabilities based on Maryland law, court decisions, research and studies; and that Maryland can better ensure that such determinations are made in a fairer manner based on actual evidence. The existing law is a result of recommendations endorsed by the Commission, which legislation had the support of multiple other groups.

Finally, current law allowing parents to demonstrate how they can address any identified parenting deficiency by use of support services, which simply codifies the rights of persons with disabilities to reasonable accommodations. There are a range of technologies and supports that can assist parents with disabilities to remove barriers to healthy parenting. To the extent deficiencies are identified that adversely affect a child, a parent has the ability to counter such deficiency by demonstrating how they can neutralize any such concerns.

For the above reasons, we vigorously oppose SB 28 to the extent it totally repeals the judicial protections against implicit bias and discrimination of parents with disabilities and the processes currently in place to ensure equal justice.

Contact Information:

Sarah Basehart
Independence Now
240-898-2183
sbasehart@innow.org

Hindley Williams
The IMAGE Center
410-305-9199
hwilliams@imagemd.org